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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re C.G., a Person Coming Under the  
Juvenile Court Law.

B212136  
(Los Angeles County  
Super. Ct. No. VJ32450)

THE PEOPLE,

Plaintiff and Respondent,

v.

C.G.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County,  
Robert S. Ambrose, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Reversed.

Esther R. Sorkin, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant  
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Linda C.  
Johnson and Elaine F. Tumonis, Deputy Attorneys General, for Plaintiff and Respondent.

The minor C.G. appeals from the juvenile court's orders that she remain a ward of the court and be suitably placed after finding she assaulted Yureza Sanchez with a caustic chemical in violation of Penal Code section 244.<sup>1</sup> We agree with the minor's contention the evidence is insufficient to support the finding and reverse.<sup>2</sup>

### **FACTUAL BACKGROUND**

Yureza Sanchez was standing on her scooter outside of school on July 17, 2008, when the minor came up behind her and said, "You better watch your back, bitch." Sanchez turned and saw the minor standing about two to three feet away, holding a small cylinder, which Sanchez believed was a container of pepper spray. The minor extended the cylinder towards Sanchez, who began to back away, saying, "Don't do it." The minor sprayed the contents of the cylinder directly into Sanchez's eyes and face. Before the minor left she screamed, "Cry bitch, cry."

Sanchez testified when the spray hit her face, it "burned really, really bad." Her facial skin "was red and turning like rashes." Her eyes "burned" for "30 to 40 minutes" and "were watery and red." Sanchez was then under a doctor's care for unrelated "eye problems" and had to seek further treatment after being sprayed in the eyes.

Following the People's presentation of evidence, the defense moved to dismiss (Welf. & Inst. Code, § 701) on the ground there was no proof the pepper spray was a "caustic chemical" within the meaning of section 244. The juvenile court denied the motion in light of Sanchez's testimony.

The minor testified in her own defense at the jurisdiction hearing that Sanchez was the aggressor. According to the minor, Sanchez rode up on her scooter as the minor was walking her dogs. They argued, and Sanchez threw her scooter, striking the minor's shoulder. The minor responded by spraying Sanchez with a cylinder, containing what she identified as pepper spray, which she always carried with her.

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<sup>1</sup> Statutory references are to the Penal Code.

<sup>2</sup> Because we conclude there is insufficient evidence to support the finding the minor violated section 244, we need not address the minor's second contention her conduct violated a more specific statute governing the unlawful use of "tear gas."

## DISCUSSION

### 1. *The Standard of Review*

The same standard of appellate review is applicable in considering the sufficiency of the evidence in a juvenile proceeding as in reviewing the sufficiency of the evidence to support a criminal conviction. (*In re Cheri T.* (1999) 70 Cal.App.4th 1400, 1404; *In re Jose R.* (1982) 137 Cal.App.3d 269, 275.) In either case we view the evidence in the light most favorable to the People and presume in support of the judgment the existence of every fact the trier of fact could reasonably deduce from the evidence. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206; *People v. Jones* (1990) 51 Cal.3d 294, 314.) The defendant's conviction will be upheld if, viewing the entire record in that light, "'any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" [Citations.] In making this assessment the court looks to the whole record, not just the evidence favorable to the respondent to determine if the evidence supporting the verdict is substantial in light of other facts. [Citations.]" (*People v. Holt* (1997) 15 Cal.4th 619, 667.)<sup>3</sup>

### 2. *There Is No Substantial Evidence the Minor Used a Caustic Substance Within the Meaning of Section 244*

To prove the offense of assault with caustic chemicals the People must establish the defendant "willfully and maliciously place[d] or thr[ew], or cause[d] to be placed or thrown, upon the person of another, any vitriol, corrosive acid, flammable substance or *caustic chemical* of any nature, with the intent to injure the flesh or to disfigure the body

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<sup>3</sup> "Substantial evidence" in this context means "evidence which is reasonable, credible, and of solid value -- such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Johnson* (1980) 26 Cal.3d 557, 578; accord, *People v. Hill* (1998) 17 Cal.4th 800, 848-849 [""When the sufficiency of the evidence is challenged on appeal, the court must review the whole record in the light most favorable to the judgment to determine whether it contains substantial evidence -- i.e., evidence that is credible and of solid value -- from which a rational trier of fact could have found the defendant guilty beyond a reasonable doubt."" [Citations.]"]].)

of that person . . . .” (§ 244, emphasis added; Judicial Council of Cal. Crim. Jury Instns. (2006) CALCRIM No. 877.)

Because the term “caustic” is not defined in the Penal Code,<sup>4</sup> in the absence of a statutory definition, we give the words their “usual and ordinary meaning,” with the aim of effectuating the Legislature’s goal in enacting the law. (See *People v. Arias* (2008) 45 Cal.4th 169, 177.) Section 244 was enacted “to deter wicked and viciously disposed persons from injuring the flesh or disfiguring the body of a human being by the use of acids of any kind which contain caustic or corrosive properties sufficient strong to accomplish the purpose of the person who throws them or causes them to be placed upon the body of another with the intent mentioned in said code section.” (*People v. Day* (1926) 199 Cal. 78, 89 (conc. opn. of Seawell, J.).) In other words, the reason for section 244 was to outlaw the throwing of those substances, including “caustic chemical[s] of any nature,” which have properties enabling them to cause the damage described in the statute. (*Ibid.*)

The plain and ordinary meaning of caustic chemicals requires a showing of tissue damage by burning and/or corrosion as the result of chemical action. (See Dorland’s Illustrated Medical Dict., < [www.mercksource.com](http://www.mercksource.com) > [as of November 10, 2009] [defining caustic as “burning or corrosive; destructive to tissue”]; Oxford English Dict., <<http://dictionary.oed.com>> [as of November 10, 2009] [defining caustic as “burning, corrosive, destructive of organic tissue”]; Merriam-Webster’s Online Dict., <[www.merriam-webster.com](http://www.merriam-webster.com)> [as of November 10, 2009] [defining caustic as “capable of destroying or eating away by chemical action; corrosive”].)

Although the record shows the substance the minor used on Sanchez was pepper spray, the evidence is insufficient it constituted a caustic chemical under section 244. Neither the cylinder itself nor a chemical analysis of its contents was introduced into

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<sup>4</sup> The Penal Code defines “flammable substance” as “gasoline, petroleum products, or flammable liquids with a flashpoint of 150 degrees Fahrenheit or less. (§ 244.) No definition is provided for vitriol, corrosive acid or caustic chemical.

evidence. Nor was there expert testimony concerning the chemical composition of the substance and its general burning or corrosive effects on human tissue. As for the pepper spray's particular effects on Sanchez, no medical evidence was introduced at all. Instead, Sanchez's testimony was the sole basis for determining whether she had sustained the type of injury contemplated by the statute. Sanchez testified when the pepper spray entered her eyes, she felt a burning sensation and her eyes became red and watery for a time, prompting her to seek further medical care. When the substance came into contact with Sanchez's face, her skin also reddened, "turn[ed] like rashes," and was painful. Sanchez was not asked whether the pepper spray exacerbated or prolonged her then-preexisting eye injury. Nor was Sanchez asked to clarify what she meant in testifying the pepper spray made "like rashes" on her face; and whether her facial skin was in the same or worse condition since being sprayed. Obviously, Sanchez's testimony suggests she suffered a singularly unpleasant, perhaps even harmful, experience. However, as circumstantial evidence the minor committed an assault under section 244, Sanchez's testimony fails to prove the pepper spray caused the destructive or disfiguring injury associated with a caustic chemical. The juvenile court finding is not supported by substantial evidence. However, the record does support a finding of assault under Penal Code section 240, a lesser included offense.

### **DISPOSITION**

The order under review is reversed, and the matter is remanded for entry of an amended judgment consistent with this decision.

ZELON, J.

We concur:

PERLUSS, P. J.

JACKSON, J.